

VIOLATION OF PROTECTIVE ORDER

2009 GENERAL SESSION

STATE OF UTAH

LONG TITLE**General Description:**

This bill creates a basis for dismissing a protective order if a petitioner acts in contravention of the protective order provisions.

Highlighted Provisions:

This bill:

- ▶ provides a respondent the basis for dismissing the protective order if a petitioner repeatedly acts in contravention of the protective order provisions; and
- ▶ requires the court approved forms for all protective orders to contain a notice to petitioner that acting in contravention of the protective order provisions may be grounds for amending or dismissing the protective order.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

78B-7-105, as renumbered and amended by Laws of Utah 2008, Chapter 3

78B-7-115, as last amended by Laws of Utah 2008, Chapter 163 and renumbered and amended by Laws of Utah 2008, Chapter 3

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **78B-7-105** is amended to read:

78B-7-105. Forms for petitions and protective orders -- Assistance.

(1) (a) The offices of the court clerk shall provide forms and nonlegal assistance to persons seeking to proceed under this chapter.

(b) The Administrative Office of the Courts shall develop and adopt uniform forms for petitions and orders for protection in accordance with the provisions of this chapter. That

office shall provide the forms to the clerk of each court authorized to issue protective orders.

The forms shall include:

(i) a statement notifying the petitioner for an ex parte protective order that knowing falsification of any statement or information provided for the purpose of obtaining a protective order may subject the petitioner to felony prosecution;

(ii) a separate portion of the form for those provisions, the violation of which is a criminal offense, and a separate portion for those provisions, the violation of which is a civil violation, as provided in Subsection 78B-7-106(5);

(iii) language in the criminal provision portion stating violation of any criminal provision is a class A misdemeanor, and language in the civil portion stating violation of or failure to comply with a civil provision is subject to contempt proceedings;

(iv) a space for information the petitioner is able to provide to facilitate identification of the respondent, such as social security number, driver license number, date of birth, address, telephone number, and physical description;

(v) a space for the petitioner to request a specific period of time for the civil provisions to be in effect, not to exceed 150 days, unless the petitioner provides in writing the reason for the requested extension of the length of time beyond 150 days;

(vi) a statement advising the petitioner that when a minor child is included in an ex parte protective order or a protective order, as part of either the criminal or the civil portion of the order, the petitioner may provide a copy of the order to the principal of the school where the child attends; and

(vii) a statement advising the petitioner that if the respondent fails to return custody of a minor child to the petitioner as ordered in a protective order, the petitioner may obtain from the court a writ of assistance.

(2) If the person seeking to proceed under this chapter is not represented by an attorney, it is the responsibility of the court clerk's office to provide:

(a) the forms adopted pursuant to Subsection (1);

(b) all other forms required to petition for an order for protection including, but not limited to, forms for service;

(c) clerical assistance in filling out the forms and filing the petition, in accordance with Subsection (1)(a). A court clerk's office may designate any other entity, agency, or person to

64 provide that service, but the court clerk's office is responsible to see that the service is
65 provided;

66 (d) information regarding the means available for the service of process;

67 (e) a list of legal service organizations that may represent the petitioner in an action
68 brought under this chapter, together with the telephone numbers of those organizations; and

69 (f) written information regarding the procedure for transporting a jailed or imprisoned
70 respondent to the protective order hearing, including an explanation of the use of transportation
71 order forms when necessary.

72 (3) No charges may be imposed by a court clerk, constable, or law enforcement agency
73 for:

74 (a) filing a petition under this chapter;

75 (b) obtaining an ex parte protective order;

76 (c) obtaining copies, either certified or not certified, necessary for service or delivery to
77 law enforcement officials; or

78 (d) fees for service of a petition, ex parte protective order, or protective order.

79 (4) A petition for an order of protection shall be in writing and verified.

80 (5) (a) All orders for protection shall be issued in the form adopted by the
81 Administrative Office of the Courts pursuant to Subsection (1).

82 (b) Each protective order issued, except orders issued ex parte, shall include the
83 following language:

84 "Respondent was afforded both notice and opportunity to be heard in the hearing that
85 gave rise to this order. Pursuant to the Violence Against Women Act of 1994, P.L. 103-322,
86 108 Stat. 1796, 18 U.S.C.A. 2265, this order is valid in all the United States, the District of
87 Columbia, tribal lands, and United States territories. This order complies with the Uniform
88 Interstate Enforcement of Domestic Violence Protection Orders Act."

89 (c) Each protective order issued, including protective orders issued ex parte, shall
90 include the following language:

91 "NOTICE TO PETITIONER: The court may amend or dismiss a protective order at any time if
92 it finds that the petitioner has repeatedly acted in contravention of the protective order
93 provisions to intentionally or knowingly induce the respondent to violate the protective order,
94 and that such acts demonstrate that petitioner no longer has a reasonable fear of the respondent

95 and the basis for the issuance of the protective order no longer exists."

96 Section 2. Section **78B-7-115** is amended to read:

97 **78B-7-115. Dismissal of protective order.**

98 (1) A protective order that has been in effect for at least two years may be dismissed if
99 the court determines that the petitioner no longer has a reasonable fear of future abuse. In
100 determining whether the petitioner no longer has a reasonable fear of future abuse, the court
101 shall consider the following factors:

102 (a) whether the respondent has complied with treatment recommendations related to
103 domestic violence, entered at the time the protective order was entered;

104 (b) whether the protective order was violated during the time it was in force;

105 (c) claims of harassment, abuse, or violence by either party during the time the
106 protective order was in force;

107 (d) counseling or therapy undertaken by either party;

108 (e) impact on the well-being of any minor children of the parties, if relevant; and

109 (f) any other factors the court considers relevant to the case before it.

110 (2) The court may amend or dismiss a protective order that has been in effect for at
111 least one year if it finds by clear and convincing evidence that:

112 (a) the petitioner has repeatedly acted in contravention of the protective order
113 provisions to intentionally or knowingly induce the respondent to violate the protective order;

114 (b) the petitioner's actions demonstrate that petitioner no longer has a reasonable fear
115 of the respondent;

116 (c) the basis for the issuance of the protective order no longer exists; and

117 (d) respondent has not been arrested for a protective order violation or any crime of
118 violence subsequent to the issuance of the protective order.

119 (3) If the court does not grant respondent's motion to dismiss or amend the protective
120 order, attorney's fees shall be awarded to petitioner.

121 (4) The court shall enter sanctions against the respondent which may include a finding
122 of contempt, fines or jail times as provided by law if the court finds that the respondent's
123 motion was filed:

124 (a) wholly without merit,

125 (b) in bad faith, or

126 (c) to harass or intimidate the petitioner.

127 [~~(2)~~] (5) Notice of a motion to dismiss a protective order shall be made by personal
128 service on the petitioner in a protective order action as provided in Rules 4 and 5, Utah Rules
129 of Civil Procedure.

130 [~~(3)~~] (6) If a divorce proceeding is pending between the parties to a protective order,
131 the protective order shall be dismissed when the court issues a decree of divorce for the parties
132 if:

133 (a) the petitioner in the protective order action is present or has been given notice in
134 both the divorce and protective order action of the hearing; and

135 (b) the court specifically finds that the order need not continue.

136 [~~(4)~~] (7) When the court dismisses a protective order, the court shall immediately issue
137 an order of dismissal to be filed in the protective order action and transmit a copy of the order
138 of dismissal to the statewide domestic violence network as described in Section 78B-7-113.